

## REMARKS

### I. Status of the Application

Claims 1-4, 9 and 11-18 are pending in this application. In the July 28, 2005 Office Action, the examiner provisionally rejected claims 1-4, 9 and 11-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending U.S. Patent Application Serial No. 10/685077 (“the ‘077 Application”).

In this response, applicant has (i) submitted a terminal disclaimer to overcome the examiner’s provisional rejection of claims 1-4, 9 and 11-18; and (ii) provided replacement drawings in response to Form PTO-948.

### II. Double Patenting Rejections

In the July 28, 2005 Office action, the examiner provisionally rejected claims 1-4, 9 and 11-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of the ‘077 Application.

Applicant respectfully traverses the examiner’s provisional rejection of claims 1-4, 9 and 11-18 under the judicially created doctrine of obviousness-type double patenting. Nevertheless, to propel the application to allowance, applicant submits a terminal disclaimer to overcome the examiner’s provisional rejection. Applicant notes that filing a terminal disclaimer in response to an obviousness-type double patenting rejection creates no “presumption or estoppel on the merits of the rejection”. Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F. 2d 870 (Fed. Cir. 1991).

As set forth in 37 CFR 1.130(b), a timely filed terminal disclaimer in compliance

with 37 CFR 1.321 may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground, provided that the conflicting application or parent is shown to be commonly owned with the application. The present application has been assigned to Siemens Building Technologies AG, as evidenced in the U.S. Patent Office at reel/frame 014612/0787. Siemens Building Technologies AG is also the owner of the '077 Application, as evidenced in the U.S. Patent Office at reel/frame 014614/0206. Thus, the present application and the '077 Application are commonly owned by Siemens Building Technologies AG.

Applicant encloses a terminal disclaimer in compliance with 37 CFR 1.321 to overcome the examiner's provisional rejection of claims 1-4, 9 and 11-18 under the judicially created doctrine of obviousness-type double patenting. Enclosed is a check in the amount of \$130.00 in payment of the in payment of the terminal disclaimer submission. Accordingly, the examiner's rejection of claims 1-4, 9 and 11-18 under the judicially created doctrine of obviousness-type double patenting should be withdrawn.

### III. Replacement Drawings

The Notice of Draftsperson's Drawing Review (Form PTO-948) provided with the July 28, 2005 Office Action noted that the drawings were objected to by the Draftsperson under CFR 1.84 or 1.152 for various reasons. Applicant submits herewith replacement drawings for the application correcting the issues noted on Form PTO-948.

IV. Conclusion

For all of the foregoing reasons, it is respectfully submitted the applicant has made a patentable contribution to the art. Favorable reconsideration and allowance of this application, including claims 1-4, 9 and 11-18, is therefore respectfully requested.

Respectfully submitted,



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